

HONORABLE RICHARD A. JONES

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

MICROSOFT CORPORATION,  
Plaintiff,

vs.

BARNES & NOBLE, INC.,  
BARNESANDNOBLE.COM LLC, HON  
HAI PRECISION INDUSTRY CO., LTD.,  
FOXCONN INTERNATIONAL  
HOLDINGS LTD., FOXCONN  
ELECTRONICS, INC., FOXCONN  
PRECISION COMPONENT (SHENZHEN)  
CO., LTD., and INVENTEC  
CORPORATION,

Defendants.

Case No. 11-485 RAJ

JOINT MOTIONS OF MICROSOFT,  
HON HAI, AND FOXCONN TO (A)  
TEMPORARILY LIFT STAY AND (B)  
DISMISS THE HON HAI/FOXCONN  
DEFENDANTS WITHOUT PREJUDICE

**NOTED FOR:  
TUESDAY, DECEMBER 20, 2011**

Plaintiff Microsoft Corporation ("Microsoft"), and Defendants Hon Hai Precision Industry Co., Ltd., Foxconn International Holdings Ltd., Foxconn Electronics, Inc., and Foxconn Precision Component (Shenzhen) Co., Ltd. (the "Hon Hai/Foxconn Defendants") respectfully move the Court for an Order (a) temporarily lifting the stay in this action and (b) dismissing, without prejudice, Microsoft's claims against the Hon Hai/Foxconn Defendants pursuant to Fed. R. Civ. P. 41(a)(2). Microsoft's claims against Defendants Barnes & Noble, Inc., barnesandnoble.com LLC, and Inventec Corporation will remain pending.

JOINT MOTION OF MICROSOFT, HON  
HAI, AND FOXCONN TO (A)  
TEMPORARILY LIFT STAY AND (B)  
DISMISS THE HON HAI/FOXCONN  
DEFENDANTS WITHOUT PREJUDICE - 1

LAW OFFICES  
DANIELSON HARRIGAN LEYH & TOLLEFSON LLP  
999 THIRD AVENUE, SUITE 4400  
SEATTLE, WASHINGTON 98104  
TEL, (206) 623-1700 FAX, (206) 623-8717

1 On June 8, 2011, this Court entered an Order pursuant to 28 U.S.C. § 1659(a) staying  
2 this action in favor of a pending ITC action involving the same parties (ECF No. 43).  
3 Microsoft has withdrawn its Amended Complaint in the ITC action as to the Hon Hai/Foxconn  
4 Defendants only, and the ITC action has been terminated as to the Hon Hai/Foxconn  
5 Defendants only.<sup>1</sup> Microsoft's ITC action remains pending as to Barnes & Noble,  
6 barnesandnoble.com, and Inventec.

7 Microsoft and the Hon Hai/Foxconn Defendants request that the stay in this action be  
8 lifted temporarily for the sole purpose of effecting the dismissal without prejudice of  
9 Microsoft's claims against the Hon Hai/Foxconn Defendants in this action. The requested  
10 dismissal is to be without prejudice and with respect to the Hon Hai/Foxconn Defendants only.

11 Microsoft and the Hon Hai/Foxconn Defendants respectfully request that the Court  
12 grant their joint motion, temporarily lift the stay in this action as to the Hon Hai/ Foxconn  
13 Defendants only, and dismiss without prejudice Microsoft's claims against the Hon  
14 Hai/Foxconn Defendants, consistent with the Proposed Order submitted herewith.

15 DATED this 20<sup>th</sup> day of December, 2011.

16 DANIELSON HARRIGAN LEYH &  
17 TOLLEFSON LLP

DORSEY & WHITNEY LLP

18 By s/Shane P. Cramer  
19 Arthur W. Harrigan, Jr., WSBA #1751  
20 Christopher Wion, WSBA #33207  
21 Shane P. Cramer, WSBA #35099

By s/Douglas Stewart  
Douglas Stewart, WSBA #34068  
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Glenn E. Westreich  
Steven M. Levitan  
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2033 Gateway Place, Suite 300

25 <sup>1</sup> A copy of the ITC's December 15, 2011 order terminating the ITC action as to the Hon Hai/Foxconn Defendants  
is attached hereto as Exhibit A.

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18 **Attorneys for Plaintiff Microsoft**  
19 **Corporation**

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**Attorneys for Defendants Foxconn**  
**Electronics Inc., Foxconn Precision**  
**Components (Shen Zhen) Co., Ltd.,**  
**Foxconn International Holdings Ltd.,**  
**and Hon Hai Precision Industry Co.,**  
**Ltd.**

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JOINT MOTION OF MICROSOFT, HON  
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DISMISS THE HON HAI/FOXCONN  
DEFENDANTS WITHOUT PREJUDICE - 3

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1 **CERTIFICATE OF SERVICE**

2 I, Susie Clifford, swear under penalty of perjury under the laws of the State of  
3 Washington to the following:

- 4 1. I am over the age of 21 and not a party to this action.  
5 2. On the 20<sup>th</sup> day of December, 2011, I caused the preceding document to be  
6 served on counsel of record in the following manner:

7 **Counsel for Defendants Barnes & Noble, Inc.**  
8 **and barnesandnoble.com LLC**

9 Louis D. Peterson ([ldp@hcmp.com](mailto:ldp@hcmp.com)) \_\_\_\_\_ Messenger  
10 Michael R. Scott ([mrs@hcmp.com](mailto:mrs@hcmp.com)) \_\_\_\_\_ US Mail  
11 Mary E. Crego ([mec@hcmp.com](mailto:mec@hcmp.com)) \_\_\_\_\_ Facsimile  
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14 **Counsel for Foxconn Electronics, Inc., Foxconn**  
15 **Precision Components (Shen Zhen) Co., Ltd.**  
16 **Foxconn International Holdings Ltd., and**  
17 **Hon Hai Precision Industry Co., Ltd.**

18 Douglas Stewart ([stewart.douglas@dorsey.com](mailto:stewart.douglas@dorsey.com)) \_\_\_\_\_ Messenger  
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24 \_\_\_\_\_ s/Susie Clifford  
25 Susie Clifford

JOINT MOTION OF MICROSOFT, HON  
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# **EXHIBIT A**

**UNITED STATES INTERNATIONAL TRADE COMMISSION**  
**Washington, D.C.**

**In the Matter of**

**CERTAIN HANDHELD ELECTRONIC  
COMPUTING DEVICES, RELATED  
SOFTWARE, AND COMPONENTS  
THEREOF**

**Investigation No. 337-TA-769**

**NOTICE OF COMMISSION DECISION NOT TO REVIEW AN  
INITIAL DETERMINATION TERMINATING THE INVESTIGATION AS TO  
CERTAIN RESPONDENTS BASED ON PARTIAL WITHDRAWAL OF THE  
COMPLAINT**

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 23) of the presiding administrative law judge ("ALJ") terminating the above-captioned investigation as to respondents Hon Hai Precision Industry Co., Ltd. and Foxconn Electronics, Inc., both of Tucheng City, Taiwan; Foxconn Precision Component (Shenzhen) Co., Ltd. of Shenzhen, China; and Foxconn International Holdings Ltd. of Kowloon, Hong Kong (collectively, "the Foxconn/Hon Hai respondents") based on partial withdrawal of the complaint.

**FOR FURTHER INFORMATION CONTACT:** Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on April 25, 2011, based on a complaint filed by Microsoft Corporation ("Microsoft") of Redmond, Washington. 76 *Fed. Reg.* 22918. The complaint, as amended, alleges a violation of section 337

of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain handheld electronic computing devices, related software, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 5,778,372; 5,889,522; 6,339,780; 6,891,551; and 6,957,233. The complaint further alleges the existence of a domestic industry. The Commission's notice of investigation named several respondents including the Foxconn/Hon Hai respondents.

On November 9, 2011, Microsoft and the Foxconn/Hon Hai respondents jointly moved to terminate the investigation as to the Foxconn/Hon Hai respondents based upon withdrawal of all allegations as to the subject respondents. The Commission investigative attorney filed a response in support of the joint motion and no party opposed the motion.

The ALJ issued the subject ID on November 28, 2011, granting the joint motion for termination of the investigation as to the Foxconn/Hon Hai respondents. He found that the motion for partial termination satisfies Commission rule 210.21(a)(1). No party petitioned for review of the ID. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure, 19 C.F.R. §§ 210.21, 210.42(h).

By order of the Commission.



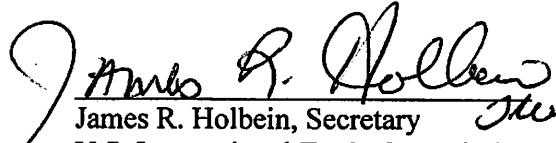
James R. Holbein  
Secretary to the Commission

Issued: December 15, 2011

**CERTAIN HANDHELD ELECTRONIC COMPUTING DEVICES, Inv. No. 337-TA-769  
RELATED SOFTWARE, AND COMPONENTS THEREOF**

**PUBLIC CERTIFICATE OF SERVICE**

I, James R. Holbein, hereby certify that the attached **NOTICE** has been served by hand upon, the Commission Investigative Attorney, Jeffrey Hsu, Esq., and the following parties as indicated on **December 15, 2011**.

  
James R. Holbein, Secretary  
U.S. International Trade Commission  
500 E Street, SW, Room 112  
Washington, DC 20436

**On Behalf of Complainant Microsoft Corporation:**

V. James Adduci, II  
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Washington, DC 20036

( ) Via Hand Delivery  
( ) Via Overnight Delivery  
( ☒ ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**On Behalf of Respondents Barnes & Noble, Inc. and  
barnesandnoble.com LLC:**

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( ) Via Hand Delivery  
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( ☒ ) Via First Class Mail  
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**On Behalf of Respondents Hon Hai Precision Industry Co.,  
Ltd., Foxconn Electronics, Inc., Foxconn Precision  
Component (Shenzhen) Co. Ltd. and Foxconn  
International Holdings Ltd.:**

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**On Behalf of Inventec Corporation:**

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